

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William Rasenberger	Team: Squad #07	CCRB Case #: 202103192	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/02/2021 4:19 PM, Tuesday, 03/02/2021 4:50 PM	Location of Incident: § 87(2)(b) 151 West 100th Street	18 Mo. SOL 9/2/2022	Precinct: 24		
Date/Time CV Reported Wed, 05/26/2021 2:23 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 05/26/2021 2:23 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Roberson Tunis	29541	946347	024 PCT
2. POF Shantal Melendez	15700	964163	024 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Roberson Tunis	Force: Police Officer Roberson Tunis used physical force against § 87(2)(b) inside of § 87(2)(b)	§ 87(2)(b)
B . POM Roberson Tunis	Abuse: Police Officer Roberson Tunis drew his gun inside of § 87(2)(b)	§ 87(2)(b)
C . POM Roberson Tunis	Force: Police Officer Roberson Tunis pointed his gun at § 87(2)(b) inside of § 87(2)(b)	§ 87(2)(b)
D . POF Shantal Melendez	Discourtesy: Police Officer Shantal Melendez spoke discourteously to § 87(2)(b) inside of § 87(2)(b)	§ 87(2)(b)
E . POM Roberson Tunis	Force: Police Officer Roberson Tunis used physical force against § 87(2)(b) inside of § 87(2)(b)	§ 87(2)(b)
F . POF Shantal Melendez	Force: Police Officer Shantal Melendez restricted § 87(2)(b) breathing inside of § 87(2)(b)	§ 87(2)(b)
G . POM Roberson Tunis	Abuse: Police Officer Roberson Tunis strip-searched § 87(2)(b) inside of 151 West 100th Street.	§ 87(2)(b)
H . POM Roberson Tunis	Off. Language: Police Officer Roberson Tunis made offensive remarks to § 87(2)(b) on the basis of § 87(2)(b) perceived mental status inside of 151 West 100th Street.	§ 87(2)(b)
I . POM Roberson Tunis	Discourtesy: Police Officer Roberson Tunis spoke discourteously to § 87(2)(b) inside of 151 West 100th Street.	§ 87(2)(b)

Case Summary

On May 26th, 2021, the CCRB received the following complaint from § 87(2)(b) [BR 1].

On March 2nd, 2021, § 87(2)(b) and his friend were sitting outside of their friend's apartment on the § 87(2)(b) floor of § 87(2)(b) in Manhattan, part of the NYCHA § 87(2)(b) and his friend smoked a marijuana cigarette while they waited for another friend to finish showering. At about 4:30 p.m., Police Officers Roberson Tunis and Shantal Melendez of the 24th Precinct, who were conducting a routine interior patrol, approached § 87(2)(b) and his friend. The two men entered the building stairwell, and PO Tunis and PO Melendez followed behind them. PO Tunis grabbed § 87(2)(b) jacket, and allegedly brought him forcibly to the ground. [Allegation A: Force – Physical Force, § 87(2)(g) In the course of restraining § 87(2)(b) PO Tunis drew his firearm [Allegation B: Abuse of Authority – Firearm drawn, § 87(2)(g) and allegedly pointed it at § 87(2)(b) [Allegation C: Force – Firearm pointed, § 87(2)(g) Shortly thereafter, PO Melendez ordered § 87(2)(b) to give up his “fucking” hand [Allegation D: Discourtesy – Word, § 87(2)(g) PO Tunis allegedly punched § 87(2)(b) in his legs multiple times [Allegation E: Force – Physical Force, § 87(2)(g) PO Melendez allegedly applied the weight of her body against § 87(2)(b) torso, causing him difficulty breathing [Allegation F: Force – Restricted Breathing, § 87(2)(g) At the 24th Precinct stationhouse, PO Tunis conducted a strip search of § 87(2)(b) [Allegation G: Abuse of Authority – Strip Search, § 87(2)(g) and later allegedly asked § 87(2)(b) if he was “retarded” [Allegation H: Offensive Language – Mental Status, § 87(2)(g) Allegation I: Discourtesy – Word, § 87(2)(g) § 87(2)(b) was ultimately charged with criminal trespass in the third degree and possession of marijuana.

The CCRB is in possession of ten body-worn camera videos [BR 2].

Findings and Recommendations

Allegation A: Force – Police Officer Roberson Tunis used physical force against § 87(2)(b).

inside of § 87(2)(b)

Allegation B: Abuse of Authority – Police Officer Roberson Tunis drew his firearm inside of

§ 87(2)(b)

Allegation C: Force – Police Officer Roberson Tunis pointed his firearm at § 87(2)(b).

inside of § 87(2)(b)

Allegation D: Discourtesy – Police Officer Shantal Melendez spoke discourteously to § 87(2)(b).

inside of § 87(2)(b)

Allegation E: Force – Police Officer Tunis used physical force against § 87(2)(b) inside of § 87(2)(b)

Allegation F: Force – Police Officer Shantal Melendez restricted § 87(2)(b) breathing inside of § 87(2)(b)

§ 87(2)(b) stated during his CCRB interview [BR 3] that he and a friend – whom he refused to identify – were waiting outside of a third friend's apartment on the § 87(2)(b) floor of § 87(2)(b) part of the NYCHA § 87(2)(b) and his friend smoked a marijuana cigarette while their friend showered. At about 4:30 p.m., PO Tunis and PO Melendez – who were conducting a routine interior patrol inside of the building – entered the § 87(2)(b) floor hallway, where § 87(2)(b) and his friend were. This is seen at 20:38 in PO Tunis and PO Melendez's BWC videos [BR 4 and 5]. By this time, according to § 87(2)(b) he and his friend had already finished their marijuana cigarette. The BWC footage shows the two men sitting against the hallway wall, but otherwise does not capture what they are doing. PO Tunis

stated during his CCRB interview [BR 6] that he observed one or both of § 87(2)(b) and his friend rolling a marijuana cigarette. PO Tunis simultaneously smelled the odor of marijuana. The odor indicated to him that the men had recently smoked. PO Melendez stated during her CCRB interview [BR 7] that she observed marijuana in the men's proximity and smelled the odor of marijuana. She did not see the men rolling or smoking a marijuana cigarette. PO Tunis stated that, upon observing § 87(2)(b) and his friend, his intention was to place both men under arrest for marijuana possession. [Note that at the time of the incident, under NYS Penal Law 221.05, possession of small amounts of marijuana was a violation, not an arrestable offense.]

PO Tunis and PO Melendez's BWC videos show that § 87(2)(b) and his friend stood up as the officers approached. Neither of the officers are heard issuing any commands to either individual. § 87(2)(b) is seen walking into the staircase. His friend pauses before PO Tunis. PO Tunis instructs him to enter the staircase. PO Tunis and PO Melendez then follow both men into the staircase. PO Tunis's BWC video, at 20:53, shows § 87(2)(b) placing his hand on his friend's back, as if to usher him forward. § 87(2)(b) then appears to take a step down the stairs. Without issuing any commands, PO Tunis grabs the fabric of § 87(2)(b) jacket. It appears that § 87(2)(b) then turns away from PO Tunis and attempts to yank his arm away from PO Tunis. According to PO Tunis, § 87(2)(b) – who according to his arrest report [BR 8], is 6'5" and 200 pounds – pushed him. PO Tunis could not describe the push in detail, or whether it seemed that § 87(2)(b) was trying to push him away. § 87(2)(b) actions, however, elevated PO Tunis's suspicion, as it seemed that § 87(2)(b) was trying to flee from him and PO Melendez. PO Melendez stated that, after § 87(2)(b) "pushed" his friend down the staircase, § 87(2)(b) turned to her and reached toward his belt. PO Melendez's BWC footage does not corroborate her testimony. § 87(2)(b) is seen turning toward PO Melendez at 20:54 in PO Melendez's BWC video. Almost immediately thereafter, he falls onto the staircase landing. He is not seen reaching toward his belt or any other part of his person.

It is not clear from the footage whether PO Tunis forcibly brought § 87(2)(b) to the ground or if § 87(2)(b) instead lost his footing and fell. § 87(2)(b) stated that PO Tunis tackled him halfway down the staircase, causing § 87(2)(b) to hit his face against the staircase wall. The footage clearly contradicts this account. PO Tunis could not recall whether § 87(2)(b) fell onto the staircase landing or if he forcibly brought § 87(2)(b) to the ground. PO Melendez stated that she, PO Tunis, and § 87(2)(b) all fell to the ground accidentally. § 87(2)(b) stated that he was fully compliant with the officers after falling, or being brought, to the ground. Both PO Melendez and PO Tunis stated, however, that § 87(2)(b) resisted as they attempted to handcuff him. According to PO Melendez, § 87(2)(b) tensed his left arm as she tried to handcuff him. PO Tunis stated that he was trying to handcuff § 87(2)(b) right hand, and that § 87(2)(b) was stiffening his right arm. § 87(2)(b) left arm was free during this time, according to PO Tunis, and he was reaching his left hand toward his pocket and waistband.

The footage does not clearly show to what extent – if any – § 87(2)(b) was resisting. At 21:00 in PO Tunis's BWC video, § 87(2)(b) is seen grabbing the staircase banister with his right hand. It is possible that he then tries to sit or stand up. He is heard stating "get off of me." PO Tunis is then repeatedly heard yelling at § 87(2)(b) "to stay." § 87(2)(b) tells PO Tunis that he is not doing anything. It does not appear that § 87(2)(b) is resisting or trying to flee. Furthermore, PO Melendez appears to have § 87(2)(b) left arm restrained; § 87(2)(b) is not seen reaching for his pocket or waistband, as PO Tunis described. At 21:10, § 87(2)(b) is heard asking PO Tunis "what are you taking out a gun for?" § 87(2)(b) stated during his interview that PO Tunis was pointing his firearm at § 87(2)(b) chest. PO Tunis acknowledged drawing his firearm while trying to handcuff § 87(2)(b) but denied pointing it at § 87(2)(b). He explained that he feared for his safety because § 87(2)(b) appeared to be reaching for something. However, as noted above, § 87(2)(b) would not have been able to reach for anything, because PO Melendez had his left arm restrained. Just one second after § 87(2)(b) asks PO Tunis why he has drawn his gun, at 21:11 in PO Melendez's BWC footage, PO Melendez

clearly has § 87(2)(b) left hand restrained. At 21:14, she handcuffs § 87(2)(b) left hand. PO Melendez denied any recollection of PO Tunis even drawing his firearm. The footage does not show whether PO Tunis pointed his firearm at § 87(2)(b).

At 21:14 in PO Melendez's BWC footage, she is seen handcuffing § 87(2)(b) left hand. Meanwhile, PO Tunis is heard ordering § 87(2)(b) to put his hands behind his back. Because PO Melendez has § 87(2)(b) left arm restrained, it would have been impossible for § 87(2)(b) to comply with PO Tunis's order. At 21:17, PO Melendez orders § 87(2)(b) to "give me the other one; give me the fucking other one." In his own BWC footage, at 21:22, PO Tunis appears to be restraining § 87(2)(b) right arm, which would have made it impossible for § 87(2)(b) to give up his right hand to PO Melendez.

PO Tunis was continually wrestling § 87(2)(b) legs and lower body to the ground, according to § 87(2)(b) and allegedly punched § 87(2)(b) in his legs multiple times. PO Tunis denied that he used any hand strikes against § 87(2)(b). There is no video evidence that PO Tunis did so. § 87(2)(b) legs are out of frame throughout the arrest in both PO Tunis and PO Melendez's BWC videos. § 87(2)(b) further alleged that PO Melendez was "bouncing" her body on top of his torso, as she was making transmissions over her radio. This made it difficult for him to breathe. PO Melendez is seen leaning over § 87(2)(b) body, while making a radio transmission, between 21:43 and 21:55 in PO Tunis's BWC footage. PO Melendez denied that she was applying any downward pressure on § 87(2)(b) body. PO Melendez does not appear to be "bouncing" on or otherwise compressing § 87(2)(b) chest in PO Tunis's BWC footage.

Between 22:18 and 22:25, PO Tunis handcuffs § 87(2)(b) right hand. Shortly thereafter, PO Melendez reentered the § 87(2)(b) floor hallway, and collected items from where § 87(2)(b) and his friend had been sitting. These items -- which are captured in PO Melendez's BWC between 24:10 and 24:25 -- include a brown paper bag whose contents are unseen, a glassine apparently containing marijuana, rolling papers, a lighter, and what appears to be the butt of a marijuana cigarette that has been smoked. Meanwhile, PO Tunis frisked § 87(2)(b) clothes. After conducting the frisk, PO Tunis stated, he did not suspect that § 87(2)(b) had any drugs, a weapon, or any other illegal items on his person.

§ 87(2)(b) was charged with criminal trespass in the third degree (public housing) and unlawful possession of marijuana in the second degree. According to the arrest report narrative, PO Melendez observed § 87(2)(b) smoking a lit marijuana cigarette and being on the premises of § 87(2)(b) without permission or authority.

Under NYPD Patrol Guide Section 221.01, officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. MOS will use only the reasonable force necessary to gain control or custody of a subject. The decision to display or draw a firearm should be based on an articulable belief that the potential for serious physical injury is present. NYPD Patrol Guide Section 221.01 [BR 9].

Under NYPD Patrol Guide Section 221.02, officers must avoid actions which may result in chest compression, such as sitting, kneeling, or standing on a subject's chest or back, thereby reducing the subject's ability to breathe. NYPD Patrol Guide Section 221.02 [BR 9]

In DAO – DCT case 2018-18951, the tribunal held that there are certain situations where profane remarks made during a stressful or chaotic situation would not constitute misconduct. DAO-DCT case 2018-18951 [BR 10].

§ 87(2)(g)
§ 87(2)(b)
§ 87(2)(b) PO Tunis's BWC footage shows that § 87(2)(b) apparently pulled away from PO Tunis when PO Tunis first grabbed ahold of § 87(2)(b) jacket. § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(g)

PO Tunis acknowledged drawing his firearm. He stated § 87(2)(g) appeared to be reaching toward his waistband or pocket. However, BWC footage does not show § 87(2)(b) reaching. To the contrary, PO Melendez restrains § 87(2)(b) left arm almost immediately after § 87(2)(b) falls or is taken to the ground. § 87(2)(g)

PO Tunis denied that he pointed his firearm at § 87(2)(b) as § 87(2)(b) alleged. There is no video or witness testimony to settle the matter. § 87(2)(g)

§ 87(2)(g)

PO Tunis denied using hand strikes against § 87(2)(b) as § 87(2)(b) alleged. There is no video or witness testimony to settle the matter. § 87(2)(g)

BWC footage contradicts § 87(2)(b) testimony that PO Melendez compressed his chest. § 87(2)(g)

Allegation G: Abuse of Authority – Police Officer Roberson Tunis strip-searched § 87(2)(b) inside of 151 West 100th Street.

Allegation H: Offensive Language – Police Officer Roberson Tunis made offensive remarks on the basis of § 87(2)(b) perceived mental status inside of 151 West 100th Street.

Allegation I: Discourtesy – Police Officer Roberson Tunis spoke discourteously to § 87(2)(b) inside of 151 West 100th Street.

§ 87(2)(b) alleged that PO Tunis subjected him to a strip search, while in the holding cell area of the 24th Precinct stationhouse. § 87(2)(b) explained that his pants were sagging below his waist, revealing his underwear. PO Tunis allegedly frisked § 87(2)(b) underwear, and then “tried to see what was inside” of § 87(2)(b) underwear. Although § 87(2)(b) could not describe PO Tunis’s actions in detail, he stated that PO Tunis tried to expose his genital area. As mentioned above, PO Tunis stated that he did not suspect § 87(2)(b) of having any illegal items, after frisking § 87(2)(b) in the field and finding nothing. PO Tunis denied strip-searching § 87(2)(b) or taking any actions outside of normal protocol for searching prisoners at the stationhouse. He stated that he only made contact with § 87(2)(b) undergarments when he ran his fingers around the band of § 87(2)(b) boxers, solely in order to locate strings, which prisoners are not allowed to have while lodged.

The holding area search is captured in PO Tunis’s BWC beginning at 38:10. At 40:58, PO Tunis places § 87(2)(b) against the wall, and then apparently looks down, in the general direction of § 87(2)(b) waist. § 87(2)(b) becomes visibly agitated. He turns toward the only other officer in the room, and says “that’s crazy bro.” PO Tunis promptly places § 87(2)(b) back in handcuffs, and additional officers enter the room. § 87(2)(b) tells these officers that PO Tunis is “trying to look through my junk.” PO Tunis apparently states “cause you got drugs on you.” At 41:32, PO Tunis is clearly pulling the waistband of § 87(2)(b) underwear away from his stomach. § 87(2)(b) resists, and tries to move away from PO Tunis.

At 41:43, PO Tunis apparently asks § 87(2)(b) “how much drugs do you have on you?” Between 41:48 and 42:10, PO Tunis reassumes the same hunched over posture that he had before while pulling § 87(2)(b) underwear away from his body. § 87(2)(b) is no longer resisting. He explained during his interview that he eventually let PO Tunis search his underwear, and that he “took it like a man,” because there was nothing that he could do. At 42:11, one of the officers restraining § 87(2)(b) states “you got thermals and the drawls on? That’s two plus two.” At no point in either PO Tunis’s or PO Melendez’s BWC is § 87(2)(b) visibly wearing thermals, indicating that PO Tunis exposed thermals that § 87(2)(b) wore underneath his underwear. At 42:13, § 87(2)(b) again becomes very agitated, and pulls away from PO Tunis. At 42:50, § 87(2)(b) tells PO Tunis “you’re trying to look through my junk bro.” PO Tunis says “I have the same thing.” At 43:00, PO Tunis tells § 87(2)(b) “one more time and we’re done.” At 43:25, PO Tunis pulls § 87(2)(b) pants up to his waist.

§ 87(2)(b) alleged that PO Tunis removed him from the holding cell at some point to take his fingerprints. § 87(2)(b) told PO Tunis that he did not want to provide his prints. PO Tunis allegedly asked § 87(2)(b) whether he was “retarded” and whether he wanted to go to central booking. PO Tunis denied asking § 87(2)(b) whether he was retarded. There is no video evidence to settle the matter.

Under PG 208-05, a standard search at a police facility includes the removal of outer garments such as jackets, hats, belts, shoes, socks, and wallets. All pockets are to be emptied and all clothing not removed will be examined by grabbing, crushing, and squeezing the garments and by sliding the hands across the body to detect articles that may be underneath or sewn to the clothing.

A strip search is any search in which an individual’s undergarments (e.g. underwear) and/or private areas are exposed or in which an individual’s clothing is removed, lifted up, or pulled down to expose undergarments or private areas. A strip search of a prisoner may not be conducted routinely in connection with an arrest. Strip searches may only be conducted with the knowledge and approval of the arresting officer’s immediate supervisor. A strip search may only be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods. NYPD Patrol Guide Section 208-05 [BR 11].

§ 87(2)(g) At various points, PO Tunis is seen pulling § 87(2)(b) underwear from his body. § 87(2)(g)

§ 87(2)(b) PO Tunis and PO Melendez’s BWC footage do not appear to capture any indicia that § 87(2)(b) could be concealing drugs or other contraband in his undergarments. § 87(2)(g)

PO Tunis denied asking § 87(2)(b) whether he was retarded, as § 87(2)(b) alleged. Without video evidence, the investigation could not reach a determinate conclusion. § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR 12].
- Police Officer Tunis has been a member of service for 13 years, over which time he has

been the subject of 12 prior complaints and 25 allegations, three of which were substantiated.

- Case 201110738 involved two substantiated allegations of stop and one substantiated allegation of frisk. The NYPD imposed a penalty of instructions. § 87(2)(g)
- Police Officer Shantal Melendez has been a member of service for four years, over which time she has been the subject of one prior complaint, including two allegations, neither of which were substantiated. § 87(2)(g)
- The CCRB is in possession of the summary of employment history for PO Tunis [BR 15].

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- According to the NYC Comptroller's Office, there are no notices of claim regarding this incident [BR 14].

Squad: _____7_____

Investigator:	____Will Rasenberger_____ Signature	____Inv. Will Rasenberger_____ Print Title & Name	____07/30/2021_____ Date
Squad Leader:	_____ Signature	____Manager Vanessa Rosen_____ Print Title & Name	____August 24, 2021_____ Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date